IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24639 of 2004

Between:

B.Siva Kumar S/o.B.Sankarappa
Jadcheral Section, Mahaboobnagar Sub Division Jadcherla
Mahaboobnagar District

..... PETITIONER

AND

1 The Vice Chairman and Managing Director,

A.P.S.R.T.C., RTC Cross Road,
Musheerabad, Hyderabad
2 The Chief Civil Engineer-II APSRTC,
Musheerabad Hyderabad
3 The Executive Engineer, APSTRC, Museerabad,
Hyderabad
4 Sri.Ravi Babu S/o. & age not know,
APSRTC, Hyderabad Rural Mahatma Gandhi Bus Station
Hyderabad
5 Sri. Urukadar S/o. & age not know,
APSRTC, Hyderabad Rural, Hyderabad
6 Sri. M.Prakash S/o. & age not know
APSRTC, Jedcherla Section, Mahaboobnagar,

Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an order, direction or a Writ more particularly in the nature of Writ Mandamus by declaring the action of the R-2 vide impugned order No.PA/660(3)2004-CCE-II,

dt.15-12-2004 and also the impugned order No.dt.4-11-2004 passed by R-3 as arbitrary, discriminatory, without application of mind, malice in Law, illegal being violation of the Article 14,16, & 21 of the Constitution of India and set aside both the impugned orders in respect of the petitioner and R-6 and consequently direct the Respondents to reconsider the request of the petitioner to be posted at Hyderabad.

Counsel for the Petitioner: MR.KRISHNA DEVAN

Counsel for Respondents 1 to 3: MR.P.VINAYAKA SWAMY (SC FOR APSRTC)

The Court made the following :

ORDER:

The present writ petition is filed to declare the action of the 2nd respondent in passing the impugned order No.PA/660(3)/2004-CCE-II, dated 15-12-2004, confirming the order No.EEHR/813(2)2002-CED, dated 04-11-2004, passed by the 3rd respondent as arbitrary, discriminatory and without application of mind.

The brief facts that are necessary for the disposal of the present writ petition are as follows:

From 16-11-2004 onwards the Executive Engineer, APSRTC, Hyderabad Rural, is compelling the writ petitioner not to attend the duties at Jedcherla but to attend the duties at Yadagirigutta, to which place he was posted by an order, dated 04-11-2004, wherein his name was at serial No.4. According to the writ petitioner, one Mr.M.Prakash, who is ready to go to Yadagirigutta, was posted to Jedcherla in the place of the writ petitioner with a sole intention of causing trouble to the petitioner. The said Prakash has also submitted representations to post him at Yadagirigutta. Since the year 2001 onwards, the petitioner has been requesting the authorities to post him at Hyderabad as his spouse is working there. The 2nd respondent has not reviewed the position very objectively and the impugned order dated 15-12-2004 was passed without applying mind to the reasonable request of the petitioner. Hence, the present writ petition.

Heard learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.

The respondents filed counter affidavit stating that the petitioner was working as a fieldman at Jedcherla since 1998 and he was transferred to Yadagirigutta vide

proceedings dated 04-11-2004 along with six other employees on administrative need in respective places. It was specifically instructed in the transfer order to relieve the petitioner immediately without waiting for substitute. Accordingly, the petitioner was relieved with effect from 06-11-2004. The petitioner never made allegations against the transferring authority and he never made any application to transfer him to Hyderabad. The theory of *mala fide*, grudge and non-application of mind was invented for the purpose of filing the present writ petition without any basis or material on record. Hence there are no grounds to interfere with the impugned proceedings.

The learned counsel for the petitioner contended that even though there is a clear vacancy at Hyderabad and the petitioner could as well be accommodated, wherein one Mr.Prakash is ready and willing to go to Yadagirigutta, the respondents have not considered the same objectively and without proper application of mind, the impugned order is passed. Since the year 2001, the petitioner is making representations to the competent authorities to transfer him to Hyderabad as his wife is working at Hyderabad and without considering those representations, the respondents went to the extent of stating that the petitioner has not made any applications and therefore, he prays to allow the writ petition.

On the other hand the learned Standing counsel appearing for the respondents contended that the transfer orders have been issued considering the suitability and capability of the persons. It is further contended that after considering all the aspects and purely on administrative exigencies, the petitioner along with some other persons was transferred by the impugned proceedings and as such the petitioner cannot have any right of choice of his place. Hence, there are no grounds to interfere with the order under challenge.

By the office order dated 04-11-2004, the petitioner was transferred from Jedcherla to Yadagirigutta, along with six other persons on administrative grounds. The said order was challenged before this Court by filing Writ Petition No.22097 of 2004, whereunder this Court directed the respondents therein to consider the representation of the petitioner dated 17-11-2004. Thereafter, the impugned order, dated 15-12-2004, was passed by the 2nd respondent stating that the postings are given according to the administrative exigencies only and the writ petitioner has not stated any reasonable grounds to interfere with the said postings issued by the

competent authority. Therefore, the representation of the petitioner is rejected.

It cannot be in dispute that the transfer is not only an incidence of service but also one of the service conditions. An employee cannot have any right to ask for any place and wherever he is transferred he is bound to work. No doubt, from the facts and circumstances of the case, the petitioner could as well be posted at Hyderabad, especially, in view of the fact that one Mr.Prakash, who was working at Hyderabad, was posted to Jedcherla. But, it is for the competent authority to take appropriate decision and simply because a vacancy had arisen at Hyderabad, that does not mean that the petitioner has to be posted to that place. The competent authority has to look into the suitability and capability of the persons and transfer them to various places. Unless, the transfer order is vitiated by *mala fides* or when the transfer order is contrary to the service rules governing the service conditions of the employees or the transfer is by way of punishment, normally this Court will not interfere with the transfer order. Except a vague allegation in the affidavit stating that the Executive Engineer has ordered transfer of the writ petitioner from Jedcherla with a sole intention to cause trouble to him, no *mala fides* were attributed and it is not a case, where the transfer order is contrary to the rules governing the service conditions, so also it is not a case where the transfer is by way of punishing the employee.

Therefore, for the aforesaid reasons, the impugned order does not suffer from any serious legal infirmities so as to call for interference of this Court. The writ petition is devoid of merits and is accordingly dismissed. No costs.

However, this order shall not preclude the respondents in considering the case of the petitioner sympathetically for transferring him to Hyderabad.

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03-03-2005

Note: Issue C.C by 07-03-2005.

B/o.

vs

To

1 The Vice Chairman and Managing Director,

A.P.S.R.T.C., RTC Cross Road,
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2 The Chief Civil Engineer-II APSRTC,
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